

IN THE COURT OF APPEALS OF TENNESSEE  
AT JACKSON  
OCTOBER 15, 2001 Session

**IN RE: ESTATE OF BRUCE DILLARD WYATT, SR., DECEASED**

**An Appeal from the Chancery Court for Lake County  
No. 4207-A J. Steven Stafford, Chancellor**

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**No. W2001-00185-COA-R3-CV - Filed June 17, 2002**

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This is a claim by devisees to enforce their right to exoneration under a will. The decedent died testate and devised to his three children real property that was encumbered by a mortgage. For a few years, the children paid the mortgage on the property. However, after realizing that the debt belonged to the estate, they filed a motion to compel the executrix of the will to make the mortgage payments and thereby exonerate the realty from the lien. The executrix objected, claiming that the time to file such a claim had expired under the Claims Act, Tennessee Code Annotated § 30-2-306(c). The trial court granted the motion to compel the executrix to pay the mortgage, finding that the Claims Act was inapplicable because the devisees were not “creditors” under the Act. The executrix now appeals that decision. We agree with the reasoning of the trial court, and therefore affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court is Affirmed**

HOLLY K. LILLARD, J., delivered the opinion of the court, in which ALAN E. HIGHERS, J., and DAVID R. FARMER, J., joined.

Timothy Boxx, The Agee Law Firm, of Tiptonville, Tennessee, for the appellant, Betty Scates Wyatt, personal representative of the estate of Bruce Dillard Wyatt.

Mark L. Hayes and W. Lewis Jenkins, Jr., Wilkerson Gauldin & Hayes, of Dyersburg, Tennessee, for the appellees, Sarah Wyatt Patton and Patricia Wyatt.

**OPINION**

This is a claim by devisees to enforce their right to exoneration under a will. Bruce Dillard Wyatt, Sr. (“Wyatt”), died testate on December 17, 1995. His widow, Betty Scates Wyatt (“Executrix”), was named executrix under his will. In accordance with a marital dissolution agreement with his previous wife, Patty Elaine Wyatt, the decedent’s will provided that all real property owned by Wyatt at the time of his death would be devised to his three children, Patricia Wyatt, Sarah Wyatt Patterson, and Bruce Wyatt, Jr. (collectively “devisees”), in equal shares. At

his death, Wyatt owned the real property in question. These parcels of real estate were encumbered by a mortgage.

In 1996, 1997, 1998, and 1999, Wyatt's son, Bruce Wyatt, Jr., paid the mortgage installments due on the parcels of land. However, early in 2000, the devisee children discovered that the mortgage installments were actually a debt of the estate, rather than a debt of the devisees. Therefore, on June 29, 2000, devisees Sarah Patterson and Patricia Wyatt filed a motion to have the Executrix pay the mortgage payments out of Wyatt's estate.<sup>1</sup> The Executrix filed a memorandum in opposition, arguing that the motion was untimely because the claim had not been filed during the statutory four-month period under the Claims Act, Tennessee Code Annotated § 30-2-306(c) ("Claims Act").

A hearing on the motion was held on December 12, 1999. After the hearing, the trial court entered an order concluding that the devisees were not "creditors" of the estate and that, therefore, they were not bound by the time limits in the Claims Act. The trial court also found that the devisees' right to have the lien removed from the property was grounded in specific performance. Finally, the trial court determined that Tennessee Code Annotated § 30-2-504, regarding misappropriation of estate assets, was applicable.<sup>2</sup> The Executrix now appeals from this order.

The main issue here is purely a question of law, namely, whether the Claims Act is applicable to the devisees' motion to compel. Consequently, our review is de novo with no presumption of correctness in the trial court's legal conclusions. *See State v. Levandowski*, 955 S.W.2d 603, 604 (Tenn. 1997); *Ridings v. The Ralph M. Parsons Co.*, 914 S.W.2d 79, 80 (Tenn. 1996).

The Executrix argues that the motion of the devisees in this case should be treated just like any other claim made against the estate. Under Tennessee Code Annotated § 30-2-307, "[a]ll claims against the estate arising from a debt of the decedent shall be barred unless filed within the period prescribed in . . . § 30-2-306(c)." Tenn. Code Ann. § 30-2-307 (2001). Section 30-2-306(c) sets forth a four-month statute of limitations for filing such claims. Tenn. Code Ann. § 30-2-306(c). The Executrix asserts that the devisees' motion constitutes a "claim against the estate arising from a debt of the decedent," and that, therefore, the four-month statute of limitations in the Claims Act applies to their claim.

In response, the devisees argue that they seek only to exercise their right to exoneration of the mortgaged property. Under the doctrine of exoneration, devisees of real property encumbered by a mortgage are entitled to have the lien discharged by payment from the estate's personalty unless

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<sup>1</sup>Bruce D. Wyatt, Jr., did not join in the motion because he was in Chapter 11 bankruptcy at the pertinent time, and the bankruptcy court had not given him permission to join.

<sup>2</sup>Though the motion to compel included a request that the estate be required to reimburse Bruce D. Wyatt, Jr., for his mortgage payments made in 1996 through 1999, the trial court denied that request because he was not a party to the proceedings. In this appeal, we are not asked to address the propriety of the trial court's decision relating to Bruce D. Wyatt, Jr.

specific provisions in the will provide otherwise. Tennessee adheres to this doctrine. In ***Wilson v. Smith***, 360 S.W.2d 78 (Tenn Ct. App. 1962), the appellate court held that an executrix is under a duty to pay the mortgage on the testator's real property, even though no claim had been filed by the creditor within the pertinent time period. ***Wilson***, 360 S.W.2d at 87-88. Thus, in ***Wilson*** the court followed the doctrine of exoneration that the debts of the estate, including debts secured by real estate, must be paid out of the testator's personal estate.

Moreover, under the prevailing view of the doctrine of exoneration, heirs may seek to compel the executrix to exonerate the property even if the creditor's time for filing a claim under the Claims Act has expired. See J. Kraut, Annotation, *Right of Heir or Devisee to Have Realty Exonerated From Lien Thereon at Expense of Personal Estate*, 4 A.L.R.3d 1023, 1045 (1965). In other words, a motion by the devisees of real property seeking exoneration of that property is not a "claim" against the estate under the Claims Act. Rather, such a motion seeks to compel the executrix to do that which she is obligated to do under the law, which is to discharge the debts of the estate. Therefore, the Claims Act and its time limitations are inapplicable to such a motion.

In this case, it is undisputed that the will devised the encumbered real property to the devisees, and that the will further provided that all debts should be paid out of the estate. Therefore, the Executrix had the duty to ensure that the real property was unencumbered by the mortgage, even if no claim to enforce that duty had been filed. See ***Wilson*** 360 S.W.2d at 87-88. The devisees herein seek only to enforce their right to exoneration and to compel the Executrix to carry out her legal duties. The devisees are not filing a "claim" against the estate as would a creditor of the estate. Consequently, the Claims Act is not applicable, and the devisees' motion is not barred by the four-month time limitation. This holding pretermits other issues raised on appeal.

The decision of the trial court is affirmed. Costs are to be taxed to the appellant, Betty Scates Wyatt, personal representative of the estate of Bruce Dillard Wyatt, Sr., and her surety, for which execution may issue, if necessary.

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HOLLY K. LILLARD, JUDGE